

Rule 26(b)(1) of the Federal Rules of Civil Procedure controls the scope of discovery, “parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s

claim or defense.” Relevance is typically interpreted broadly to allow liberal discovery. The Fifth Circuit has, in light of this discovery standard, noted that “it is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error.” *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5<sup>th</sup> Cir. 1979).

McKesson argues that before a party may depose a senior executive, the party must demonstrate that the executive has unique and personal knowledge of the facts at issue. In making this argument, McKesson, likewise, relies on the Fifth Circuit’s decision in *Upjohn*, that the trial court did not err in vacating notice to depose a corporation’s president given failure to exhaust other avenues of discovery. *Id.* The court finds, however, that the case at bar is distinguishable from the facts of *Upjohn*, given that the Government has demonstrated through documents and testimony that Mr. Julian may possess personal knowledge relevant to this litigation. Mr. Julian’s affidavit that he lacks knowledge is insufficient reason for this court to prohibit his deposition. Additionally, in *Upjohn*, the plaintiff sought testimony from the president of the company defendant prior to any attempt to depose lower level employees designated by the company. *Id.* The court in *Upjohn* noted that, “if after taking the other depositions, plaintiff was still not satisfied...the judge should probably have allowed the deposition.” *Id.* at 652. In the current case, it is in fact the testimony of McKesson’s 30(b)(6) designee as well as documents produced in discovery that have led the United States to seek the deposition of Mr. Julian.

Given the liberal discovery standard and a party’s right to use depositions as a discovery tool, along with the Fifth Circuit’s commentary in *Upjohn* and the minimal burden the deposition will place on Mr. Julian and McKesson, this court finds that the deposition of Mr. Julian is warranted and should be allowed.

IT IS, THEREFORE, ORDERED that the motion for leave to depose Mr. Paul Julian (# 269) is hereby GRANTED. Parties are to bear their own costs with regard to the present motion.

SO ORDERED, this the 11<sup>th</sup> day of July 2011.

/s/ Jane M. Virden  
UNITED STATES MAGISTRATE JUDGE